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IN THE

Supreme Court of the United States

NOVEMBER TERM, A. D. 1947.

No. 428

HARRISON PARKER,
Petitioner,

vs.

PEOPLE OF THE STATE OF ILLINOIS,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE UNITED STATES AND BRIEF IN SUPPORT THEREOF

HARRISON PARKER
Pro Se.

Schaffer Printing Company, Del. 7171

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PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE UNITED STATES

MAY IT PLEASE THE COURT:

Petition of Harrison Parker respectfully shows to this Honorable Court:

A.

Summary Statement of the Matter Involved.

1. Petitioner, as Chancellor of the Puritan Church, wrote a letter to the foreman of the Cook County Grand Jury on May 9, 1946, in which it was claimed that the Church had documents in its possession substantiating the Church's charge that The Tribune Company had violated the law, in that it had connived with a certain political organization to avoid payment of taxes amounting to $100,000,000.00 (Abst. 2).

2. An Information was thereupon filed by the State's Attorney, charging petitioner with Contempt of Court. Petitioner filed a Motion to Quash the Information, setting forth that the Information did not charge a crime, and that his writing of the letter was protected by the Constitution of the United States (Abst. 7). Petitioner then filed a petition for change of venue (Abst. 5) which was denied, and later an answer (Abst. 61). These two pleadings set forth that petitioner had first appealed to Governor Green and then to successive Chief Justices of the Criminal Court of Cook County, to Thomas J. Courtney, State's Attorney of Cook County and later to his successor, William J. Tuohy, and also to the Board of Tax Appeals in order to apprise these officials of the violation of law and conspiracy which was the subject matter of the letter to the Grand Jury, and it was only after these appeals had been ignored that the letter involved in this case was sent, and that, at the time it was mailed, there was not pending before the Grand Jury any matter in which either the Puritan Church, the petitioner or The Tribune Company had any direct or indirect interest.

3. Thereupon the Court found petitioner guilty of Contempt of Court and sentenced him to be committed to the County Jail for a term of six months.

Stage of Proceedings
At Which Federal Questions Were Raised.

1. (a) The Constitutional questions raised herein were first raised by petitioner in the Trial Court by his motion to quash the Information (Abst. 7).

(b) Upon the overruling of the motion, petitioner filed an answer in which he again raised these same questions (Abst. 61).

(c) From the judgment of the Trial Court, petitioner appealed directly to the Supreme Court of Illinois and by his Assignment of Errors raised the same Federal questions.

Jurisdiction.

1. A final judgment has been entered by the highest Court of Illinois.

2. Jurisdiction of this Court is invoked under Judicial Act, Section 237b, as amended (344 (g) Title 28 of U. S. C. A.).

3. The following cases, among others, are believed to sustain the jurisdiction of this Court:

Schneider v. *Irvington*, 308 U. S. 147.
Bridges v. *California*, 314 U. S. 266.
Truax v. *Corrigan*, 257 U. S. 312.

4. The judgment of the Supreme Court of Illinois was entered on the 22nd day of May, 1947, and petition for rehearing was filed by petitioner and rehearing was denied on the 15th day of September, 1947. Thus the date of the judgment to be reviewed is the 15th day of September, 1947.

5. The Supreme Court of Illinois dealt with the constitutional questions as follows:

> "Defendant's defense is built on the theory that the letter was written, signed and directed to the foreman of the grand jury in the exercise of the constitutional rights of freedom of speech and freedom of religion. These constitutional guaranties were never intended to, and do not constitute a license to engage in conduct tending to obstruct the administration of justice (*People* v. *Doss*, 382 Ill. 307). Defendant cannot avail himself of the constitution as a shield behind which to hide his contemptuous conduct."

Question Involved.

The constitutional question involved is:

1. May a State Court imprison a citizen for voluntarily advising the Grand Jury of information touching upon an alleged crime, where the matter is not pending before the Grand Jury and the citizen has already appealed in vain to the law enforcement officers of the State for an investigation of the alleged offense?

Opinion of the Court Below.

Docket No. 29894—Agenda 13—January, 1947.

The People of the State of Illinois, Defendant in Error, v. *Harrison Parker, Plaintiff in Error.*

Per Curiam: The defendant, Harrison Parker, was adjudged guilty of criminal contempt in the criminal court of Cook county. He was sentenced to imprisonment in the county jail for six months. This writ of error is brought on the ground, among others, that the judgment infringes defendant's constitutional rights of freedom of speech and freedom of religion.

The information charged Parker with composing, signing and mailing a letter to the foreman of the Cook county grand jury, which had just been convened. The letter was set out *haec verba* in the information. Motions for change of venue and to quash the information were overruled. In his amended answer Parker admitted the signing of the letter, but asserts that he signed it only in his capacity as an officer of the Puritan Church. He denied that the letter was contemptuous and insisted that it was composed by the Puritan Church and deposited in the mails in the furtherance of church duties, and in the exercise of the

constitutional rights of freedom of speech and freedom of religion. Any intention of showing contempt of court is disavowed, and it is pointed out that the letter contained no vicious and inflammatory language.

In substance the letter charged that the Tribune company and a certain political machine had connived together to steal one hundred million dollars from Cook county, in the form of unpaid taxes and penalties. It further charged that stockholders in the company had received huge sums of money in the form of dividends, on which no taxes had been assessed or paid. The letter concluded with an offer to appear before the grand jury and produce evidence in support of the accusations.

The defendant has been previously convicted of contempt of court for addressing voluntary communications to the grand jury of Cook county. That conviction was sustained by this court. (*People* v. *Parker*, 374 Ill. 524.) The subject matter of the letter in this case is strikingly similar to the subject matter of the letters addressed to the grand jury and considered in the former case. Accusations of stealing one hundred million dollars by tax evasion are directed toward the same publishing company, its stockholders, and certain public officials. The principal difference is that the letter in this case is not couched in the same vicious and inflammatory language that characterized the previous communications to the grand jury. By tempering the tone of his accusations, Parker seeks to escape the rule which forbids communicating with the grand jury, except through recognized lawful channels. This he cannot do. In our former decision we quoted with approval the language of Mr. Justice Field and adopted the rule laid down by him. What we said there applies with equal force to this case. The obvious purpose of

communicating with the foreman of the grand jury was to incite the grand jury into action against those accused in the letter. The grand jury was invited to call for the production of evidence which the communication stated was in the possession of the Puritan Church. This was an unofficial volunteer communication to the grand jury, inviting them to start, on their own authority, a prosecution against those accused in the communication. The sending of a communication, such as that set out in the information, to the foreman of the grand jury constitutes contempt of court. (Wharton on Criminal Practice and Pleading, 8th ed., sec. 307.) Since the letter was incorporated in the information and shows on its face that the writer is in contempt of court, the trial court properly overruled the motion to quash the information.

Defendant contends that the court erred in overruling his petitions for change of venue. One petition was for a change of venue from two of the judges of the criminal court, while a second petition was for a change of venue from Cook county. The petition for change of venue on account of prejudice of two of the judges does not come within the provisions of the venue statute in contempt proceedings. (Ill. Rev. Stat. 1945, chap. 146, par. 21a.) The right to change of venue is statutory, and the applicant must bring himself within the statutory requirements. (*People* v. *Doss*, 382 Ill. 307.) No other provision for change of venue in contempt cases appears in the statute. Contempts are *sui generis* the general statute pertaining to change of venue in criminal cases. *People* v. *Doss*, 382 Ill. 307; *People ex rel. Rusch* v. *Kotwas*, 363 Ill. 336.

The petition for change of venue from Cook county is not set out in the abstract. An affidavit attached to the petition covers more than thirty pages of the abstract. Whether or not prejudice exists in the minds of inhabitants of a county is a question of fact, to be determined in the sound discretion of the trial judge. (*People* v. *Touhy*, 361 Ill. 332.) While the affidavit filed in support of the petition contained many wild and scandalous charges against certain individuals and public officials, it utterly failed to include any facts from which it might be reasonably inferred that the inhabitants of the county had been influenced against defendant. The court did not err in overruling the petitions for change of venue.

Defendant's defense is built on the theory that the letter was written, signed and directed to the foreman of the grand jury in the exercise of the constitutional rights of freedom of speech and freedom of religion. These constitutional guaranties were never intended to, and do not, constitute a license to engage in conduct tending to obstruct the administration of justice. (*People* v. *Doss*, 382 Ill. 307.) Defendant cannot avail himself of the constitution as a shield behind which to hide his contemptuous conduct.

Other contentions of defendant are the same as those raised in his former case. There is no occasion for this court to change the views therein expressed. *People* v. *Parker*, 374 Ill. 524.

The judgment will be affirmed.

Judgment affirmed.

Reasons Relied On for Allowance of the Writ.

Your petitioner respectfully suggests the following reasons relied on for the issuance of the Writ:

1. The decision of the Supreme Court of Illinois deprives petitioner of his liberty without due process, in contravention of the First and Fourteenth Amendments.

The State Court necessarily held that a citizen cannot come before the only body in the State empowered to initiate prosecutions for felonies, and complain of the commission of a crime affecting himself and all other taxpayers of the County, which holding denied the petitioner his right to petition for redress of grievances and his right of free speech.

Petitioner raised the constitutional questions herein in the first instant in the Trial Court by Motion to Quash the Information and later by a Petition for Change of Venue and an Answer, and later raised these same questions in the Supreme Court of Illinois.

Wherefore, Harrison Parker, your petitioner, respectfully prays that a writ of certiorari be issued out of and under the seal of this Honorable Court, directed to the Supreme Court of Illinois, commanding that court to certify and send to this Court for its review and determination, on a day certain to be therein named, a full and complete transcript of the record and all proceedings in the case as numbered and entitled on its docket, and that said order of the Supreme Court of Illinois may be reversed by this Honorable Court and that your petitioner may have such other and further relief in the premises as to this Honorable Court may seem meet and just, and your petitioner will ever pray.

HARRISON PARKER,
Petitioner.

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HARRISON PARKER,

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PEOPLE OF THE STATE OF ILLINOIS,

Respondent.

BRIEF IN SUPPORT OF PETITION FOR CERTIORARI

I.

Opinion of the Court Below.

The opinion of the Supreme Court of Illinois appears in full on page 4 of the petition submitted herewith.

II.

Jurisdiction.

This subject is treated on page 3 of the petition for a writ of certiorari submitted herewith.

III.

Statement of the Case.

Petitioner was adjudged in Contempt of Court because he signed as its chancellor, a letter of the Puritan Church to the foreman of the Grand Jury, claiming to have evidence of a crime. Previously the Puritan Church had written to the State's Attorney, the Governor

and the Chief Justices of the Criminal Court claiming to have evidence of a crime without receiving an answer. In its letter the Puritan Church charged a conspiracy between a political organization and The Tribune Company to avoid payment of taxes by The Tribune Company.

IV.

Summary of Argument.

Point 1.

A citizen has a constitutional right to inform the Grand Jury of facts he believes constitute a violation of law where he has already appealed in vain to the prosecutor and the Court:

Vogel v. *Gruaz*, 110 U. S. 311.
In re Lester, 77 Ga. 143.
Worthington v. *Scribner*, 109 Mass. 487.
Brach v. *Wells*, 480 Atl. 2nd 319.
King v. *Second National Bank & Trust Co.*, 234 Ala. 106.
Wilson's Works (Andrew's Edition 1896, p. 213).
Hott v. *Yarbrough*, 112 Texas 179.
Thomas v. *Collins*, 323 U. S. 516.
Hale v. *Henkel*, 201 U. S. 43.
State v. *Stewart*, 46 La. Ann. 1164.

V.

Argument.

A citizen has a constitutional right to inform the Grand Jury of facts he believes constitute a violation of law where he has already appealed in vain to the prosecutor and the Court.

In another case, also originating in the courts of Illinois, this Court has had occasion to state:

"The avenue to the Grand Jury should always be

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free and unobstructed. Bricher might have gone directly before it without consulting Mr. Cook (the state's attorney), but if he chose to consult him instead of private counsel, there was great propriety in his doing so" (*Vogel* v. *Gruaz*, 110 U. S. 311, 315).

The right of a citizen to advise the Grand Jury of violations of law naturally follows from the principle that the Grand Jury is not limited to consideration of bills presented to it by the court and prosecutor, but may inquire into all matters that invite its attention. Justice Wilson, in discarding the theory that Grand Jurors are limited to evidence presented by a prosecutor, expressed his view of the Grand Jury as follows:

> "The oath of a Grand Juryman — and his oath is the commission under which he acts — assigns no limits except those marked by diligence itself to the course of his inquiries; why then should it be circumscribed by more contracted boundaries? Shall diligence naturally be enjoined? Shall means and opportunities of inquiries be prohibited and restrained?" Wilson's Works (Andrews Edition 1896), pp. 213-214.

Out of a wealth of cases supporting the right of a citizen to go voluntarily before a Grand Jury are: *King* v. *Second National Bank & Trust Co.*, 234 Ala. 106; *In re Lester*, 77 Georgia 143, 148; *State* v. *Stewart*, 45 La. Ann. 164, 14 So. at 145; *Worthington* v. *Scribner*, 109 Mass. 487. In fact it has been held that it is not only the right but the duty of a citizen so to act. *Hott* v. *Yarbrough*, 112 Texas 179, 245 S. W. 676; *Worthington* v. *Scribner*, supra.

This common law right is also guaranteed under the Constitution:

> "The right of a citizen informing of a violation of law like the right of a person in custody upon a charge of such violation, to be protected against lawless violence does not depend upon any amendment to the

> Constitution but arises out of the creation and establishment by the Constitution itself of a national government, paramount and supreme within its sphere of action . . . " In re *Quarles and Butler*, 158 U. S. 532.

Petitions for redress of grievances under the Constitution are to be directed to the government, which term includes the Grand Jury as well as the Legislature or Executive Officers. The Grand Jury in Illinois is the only body that can initiate prosecutions for felonies. *Illinois Constitution, Article II 8.* Private persons suffering under lawlessness in Illinois communities and seeking investigation of crimes already committed can make an effectual appeal to no other branch or arm of their government, in the event the prosecutor refuses to bring charges himself before the Grand Jury. It will be noted that this record discloses an appeal by petitioner to the prosecutor of Cook County, to the Governor of the State and to several successive Chief Justices of the criminal court, all of which were unavailing. His right, then, to address the Grand Jury was protected by his right to freedom of speech and to petition for redress of grievances. These rights, although not identical, are inseparable. *Thomas* v. *Collins*, 323 U. S. 560.

The decision of the Supreme Court of Illinois is based upon the former decision of *People* v. *Parker*, 374 Ill. 324.[1] This former case together with questions here presented was fully discussed in *Brach* v. *Wells*, 480 Atlantic 2nd 319, 156 A. L. R. 324, where the Court made a distinction between cases where the citizen first appealed to the prose-

[1] In discussing this case it was pointed out that where the prosecutor fails to act, an appeal to a magistrate would be ineffectual since the magistrate has no powers of investigation. 8 University of Chicago Law Review 561. Wisdom of the rule was also questioned 20 Chicago Kent Law Review 53.

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cutor and the courts before communicating with the Grand Jury and those where no effort was first made to obtain an initiation of prosecution by the law enforcement officers of the State. And it would appear that if the *People* v. *Parker* is entitled to consideration as an authority it must be interpreted as meaning that to escape contempt the citizen must first appeal to the law enforcement agents before going to the Grand Jury. In the case at bar, it is clear that he first acquainted the State's Attorney and the Court of the charges that he subsequently made to the Grand Jury after those officials refused to act.

> "That other adequate remedy to which petitioner is entitled is that of personally presenting his case to the Grand Jury of Baltimore City . . . the inquisitorial powers of a Grand Jury are not limited to cases in which there has been a preliminary proceeding before a magistrate nor to cases laid before them by the court or state's attorney . . .
>
> "A material difference between that case (*People* v. *Parker*, 374 Ill. 324) and the one before this Court is that in the case now before us, the appellant has communicated with the State's Attorney who has refused to act and has preferred the charge before a County Magistrate who has also refused to act." *Brach* v. *Wells*, supra.

The case at bar is, of course, distinguishable also from those cases where the communications to the Grand Jury touched matters already before them or concerned matters wherein the party communicating was or might have been named in an indictment.

If the right to petition for redress of grievances and to speak out against criminal acts is not an empty one, it cannot be curtailed because it is effectively used. The grievance charged in this case is the unlawful withholding of taxes by a large corporation claimed to be in league

with political powers. Petitioner could have complained with immunity to the Governor, the Legislature, the Highway Department or the City Council, but none of these branches of the government could have offered any relief. He followed the most effective course, he appealed first to the State's Attorney who did not act or respond; he appealed to successive chief justices of the Criminal Court, who did not act or respond. The denial of his right then to go to the Grand Jury denied him the only effective use that he might make of his right of free speech and his right of petition.[1]

The right of free speech becomes most valuable and sacred when exercised in criticism of oppression and corruption by public officials and powerful corporations. It becomes most effective when directed to persons such as the Grand Jury who have the power and impartiality required to investigate wrongs committed by persons in high places. The letter written by petitioner constituted a "clear present danger" only to those in public office who were corrupt.

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[1] "In the United States the District Attorney is a bottleneck of the prosecution (Maley: Politics and Criminal Prosecution, Chapter 3), if he is inefficient or corrupt the prosecution fails. It is, therefore, well to have a body to whom the citizen who is denied justice may come — a body that can bring publicity and moral pressure at least on the District Attorney and other officers." Professor Kidd: Why the Grand Jury's Power is a Menace to Organized Crime, 12 The Panel 32 (1934).

Although cumbersome and not necessary for the prosecution of ordinary crimes the Grand Jury is useful as a general investigating body for inquiry into the conduct of public officers and in case of large conspiracies. National Committee on Law Observation and Enforcement (Wickersham Committee) Reports Volume I Report on Prosecution, page 37.

CONCLUSION.

Petitioner respectfully submits that this case calls for the exercise by this Court of its supervisory powers in order that an interpretation of the First and Fourteenth Amendments may be had covering the points herein involved, and to do justice in this case, and to such end prays for a Writ of Certiorari to reverse the judgment of the Illinois Supreme Court.

Respectfully submitted,

HARRISON PARKER,
Pro Se.